IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

CIVIL REVISION APPLICATION NO. 486 OF 2003.

Shri Baban Rajaram Jadhav

Age:---years, Occupation: Agriculturist

Residing at Taluka Atit,

Taluka & District Satara..... .... Applicant.

V/s

The State of Maharashtra,

Through

The Special Land Acquisition Officer

No.4, Satara ..... ...

Respondents.

Mr.Kishore Walanju for the applicant.

Mr.G. N. Gawande, AGP for the State.

**CORAM: R.M.S. KHANDEPARKAR, J.**

9-12-2004

**ORAL JUDGMENT:**

Heard the learned advocates for the parties.

Rule. By consent, the rule is made returnable forthwith.

2. The points which arise for consideration in the matter are whether it is necessary for the parties to file certified copy of the award along with application under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said act") and whether the party is entitled for exemption of the time spent in obtaining the certified copy of the award while calculating the period of six weeks available to the interested party to file the application under section 18 of the said act.

3. In the case in hand, the petitioner challenges the order passed by the Collector rejecting the application filed by the petitioner under section 18 of the Land Acquisition Act, 1894. The application has been rejected on the ground that it was filed beyond period of six weeks from the date of service of notice under section 12(2) of the said act. The contention of the petitioner is that the petitioner had to obtain certified copy of the award in order to file application under section 18 of the said act and therefore there was delay in filing the application but in case the period which was spent in obtaining the certified copy of the award is excluded, the application was filed within period of 38 days and the authority having not considered the same, has acted illegally in rejecting the application.

4. Undisputedly section 18 clearly provides that in case of service of notice under section 12(2) of the said act, the application for reference has to be filed within period of six weeks form the date of service of such notice. It is not in dispute that the notice under section 12(2) of the said act was duly served upon the petitioner on

18.8.2000 in relation to the award dated 20.5.2000 and the petitioner had collected the compensation on 9.10.2000. It is the contention of the petitioner that the petitioner filed an application for certified copy of the award on 18.9.2000 and the same was made available to the petitioner on 20.2.2001 and thereafter the petitioner filed application under section 18 on 28.2.2001. On exclusion of the period from 18.9.2000 to 20.2.2001 from the period of six weeks with effect from 18.8.2000 required for filing of the application obviously the petitioner had taken 38 days to file the application. However the point is whether such an exclusion of the period is permissible under the statutory provisions applicable to the matter in hand.

5. Section 18 nowhere empowers exclusion of such period. The application under section 18 also does not require a certified copy of the award to be appended to such application. It is well settled that the application under section 18 is not an appeal against the award. The award itself is not an order but merely an offer regarding compensation for the land acquired. That being so, a certified copy of the award is not necessary to enable a party to file application under section 18 of the said Act.

6. A perusal of section 18 of the said act also discloses that an interested person is entitled to file an application for reference in case he objects to the measurement of land, amount of compensation awarded, the person to whom amount is payable or regarding apportionment of the compensation amongst the persons interested. Obviously the justification for objection to the measurement of land, amount of compensation awarded, person to whom it is payable or in relation to the apportionment

thereof are to be pleaded and substantiated by the interested person himself. In that regard, no burden is cast upon the Collector or the Land Acquisition Officer or the acquiring authority to justify the compensation awarded or the measurements obtained or regarding apportionment of the amount to which persons is payable. It is the interested person who disputes the amount of compensation or other things referred to under section 18 in respect of which reference is permissible has to plead and prove and only after the burden in that regard is discharged by the the interested party, that the onus would shift upon the acquiring authority to justify the compensation awarded or other things referred to in section 18. That being so, the question of referring to the certified copy even to enable the party to file an application under section 18 does not arise at all. The case of the interested person in that regard will have to be established independently of what has been stated in the award by the Land Acquisition Officer. That being so, there can be absolutely no necessity as such of any certified copy of the award for the purpose of filing of application under section 18 of the said Act.

7. It is also to be noted that it is not the case of the petitioner that neither the copy of the award was furnished nor the details regarding compensation were made available to the petitioner. In fact the provisions of section 12(2) clearly reveal that the intimation thereunder has to be in relation to the award itself and therefore even assuming that no copy of the award is furnished to the interested persons as far as the case of each interested person is concerned, the notice has to disclose the compensation awarded to such person in relation to the property acquired of such person. That being so the interested person gets sufficient knowledge about the compensation awarded and it

would be within his knowledge as regards the claim which he may want to put forth for enhancement of the compensation and therefore that could be no justification to demand a certified copy for the purpose of filing an application under section 18 of the said act.

8. Attention is drawn to the decision of a Division Bench in the case of ***Keshav Dattu Patil*** v. ***The State of Maharashtra,*** AIR 1978 Bom. 289 in support of the contention that period of six weeks is to be counted from the date of availability of certified copy of the award. In Keshav Dattu Patil's case the interested person was absent at the time of pronouncement of the award which was passed on 30.9.1966. A notice of award came to be served upon him on 6.10.1966. He applied for copy of the said award which was ready on 22.10.1966. He filed an application for reference under section 18 on 30.11.1966. Reference was rejected on the ground that the application was not filed within six weeks from the date of service of notice. The same was sought to be challenged placing reliance upon an unreported decision of a Division Bench of this Court delivered on 29/30.8.1977 in Special Civil Application No.1769 of 1976 wherein the contention that the notice of award can only mean notice of essential contents of the award was upheld. Relying upon the said decision it was held in Keshav Dattu Patil's case (supra) that since the essential contents were not communicated to the interested party in the notice dated 6.10.1966 same could be deemed to have been communicated only when copy of the award was ready on 22.10.1966.

9. It is to be noted that the decision in Keshav Dattu Patil's case is in the facts that notice dated 6.10.1966 issued under section 12(2) of the said act did not contain the

necessary details in relation to the award. However the judgment nowhere discloses what details of the award are required to be reproduced in the notice under section 12(2) nor the judgment discloses that any such decision was available in the unreported judgment in Spl.Civil Application No.1769 of 1976. The decision is purely based upon the factual position of the case before the Division Bench.

10. Even assuming said decision can be construed as holding that the necessary details about offer are to be disclosed in the notice under section 12(2), a perusal of the notice which was issued to the petitioner in the case in hand discloses that the same was issued in the format prescribed under the rules framed under the said act and the notice discloses the identity of the property acquired, area of the property acquired, rate at which compensation has been awarded, the total amount of compensation that has been awarded and the person whom the compensation has been so awarded. That being so, all the necessary ingredients regarding compensation which has been offered for acquisition of the petitioner's property are disclosed in the notice. It is well settled by number of decisions of this Court as well as the Apex Court that the award is not a judicial order and it is merely an offer of compensation. It is also well settled that the case which is pleaded by the applicant in the reference application under section 18 has to be established by the claimant and only thereupon the Special Land Acquisition Officer being the acquiring authority would be required to justify the offer made in the award. The award by itself is not a document establishing the value of the property. Irrespective of such an award, once the claimant establishes his case for enhancement of compensation, the acquiring body has to justify the offer if the acquiring body wants to

restrict the compensation to the extent it was offered under the award. That being so, the question of disclosure to the claimant prior to the filing of application under section 18, the grounds on which the compensation was calculated can hardly make any difference to the claimant for justifying the enhancement of compensation. This is further clear from the provisions of . Sections 23 and 24 of the said Act.

11. Section 23 clearly provides the matters to be considered in determining the compensation and section 24 provides the matters to be ignored in determining the compensation by the Court while dealing with the matter of reference under section 18 of the said act. In terms under section 23 the market value and the land at the date of publication of notification under section 4 sub-section (1) of the said act is of primary importance. The market value cannot be decided merely on the basis of reasoning by the Land Acquisition Officer in the award passed by him under section 11 of the said act. The claimant approaching for enhancement of compensation has to establish such market value with cogent evidence to be produced by him and only thereupon the onus will shift upon the acquiring body to justify the compensation calculated by the officer while passing the award under section 11. Besides the items narrated under clauses 2 to 6 are in the form of damage sustained to the persons interested on account of proceedings initiated for acquisition and for divesting of the property acquired. That being so it is primarily within the knowledge of the claimant to evaluate such damage and to establish the claim in that regard. Considering the same the mere grounds taken by the Land Acquisition Officer to justify compensation can, by no stretch of imagination, be said to be of any assistance to establish the claim pertaining to the damage suffered or the loss

suffered on account of acquisition of land and the same is required to be independently established and proved by the claimant in terms of provisions of section 23 of the said act to justify the enhancement of compensation. That being so, non availability of the certified copy of the award or the time spent in obtaining certified copy of the award can hardly be a justification for extension of period of limitation, apart from the fact that provisions of Limitation Act as regards exclusion or extension of such period are not applicable to the proceedings prior to the reference of the case to the Court. That being so no fault can be found with the authorities rejecting the application for having filed beyond period of limitation prescribed under section 18 of the said act.

12. For the reasons stated above, the petition fails and is dismissed. Rule is discharged with no order as to costs.